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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,865	07/26/2001	Richard R. Sharpe JR.	2009-174	7692

22471 7590 06/02/2005

PATENT LEGAL DEPARTMENT/A-42-C  
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EXAMINER

SINES, BRIAN J

ART UNIT PAPER NUMBER

1743

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/915,865	<b>Applicant(s)</b> SHARPE ET AL.	
	<b>Examiner</b> Brian J. Sines	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1743

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

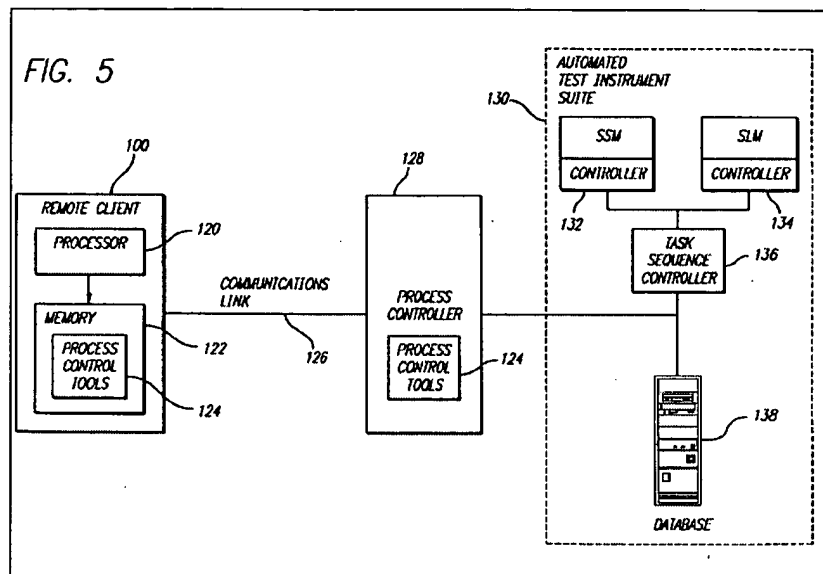
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Layne et al. (U.S. Pat. No. 5,968,731 A) (hereinafter “Layne”) in view of Ozawa et al. (U.S. Pat. No. 5,988,857 A) (hereinafter “Ozawa”).

Regarding claims 7 & 12 – 14, Layne teaches an automated apparatus for analyzing biological samples. Layne teaches an apparatus for mechanical control comprising a mechanical control system having both object-oriented and real-time features, including modular techniques, such as the use of subsystem base classes, for controlling the operations of multiple subsystems (see col. 8, line 13 – col. 15, line 57; figures 4 – 6, 8 & 10 – 12). Layne is silent to the specific teaching that a passenger template base class comprising facilities is configured for passenger creation, destruction, enumeration and state recovery. Layne does teach that the apparatus

Art Unit: 1743

utilizes programmed control in performing automated tests (see col. 8, lines 13 – 59). Layne does teach the use of object-oriented program and modular techniques (see col. 11, lines 39 – 46).



Ozawa teaches an automatic processing system, which utilizes object-oriented and real-time features, for the control of the operations of a multiplicity of subsystems (i.e., processing systems) (see col. 2, line 31 – col. 3, line 45; col. 14, lines 25 – 44; col. 16, lines 56 – 66). Ozawa further teaches the use of individual instrument classes or passenger template base classes (see col. 8, lines 51 – 64). Ozawa teaches that information for each base class is updated upon a change in the information during operation of the apparatus (see col. 35, line 44 – col. 36, line 19). Hence, as evidenced by Ozawa, a person of ordinary skill in the art would accordingly have had a reasonable expectation for success in utilizing such a mechanical control system for an analytical apparatus. The Courts have held that the prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. See *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986) (see MPEP § 2143.02).

Therefore, it would have been obvious to a person of ordinary skill in the art to incorporate the use of a mechanical control apparatus for an analytical apparatus as recited.

Regarding claims 8, 9, 13 & 14, Layne teaches that the computer control apparatus (e.g., 128 & 136) incorporates the use of a sequencing, scheduling or timing function (see col. 8, lines 44 – 64; col. 9, lines 40 – 67). Regarding claim 10, Layne teaches that the computer control apparatus comprises a recipe or computer algorithm containing instructions for enabling the instrument to perform each assay (see col. 8, lines 13 – 59; col. 10, lines 28 – 43). Regarding claim 11, Layne teaches that the computer control apparatus comprises a chronicle or table, which stores test history information, such as sample concentrations, pertaining to each assay run (see col. 10, line 33 – col. 11, line 38).

#### ***Response to Arguments***

Applicant's arguments with respect to claims 7 – 14 have been considered, but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Sines, Ph.D. whose telephone number is (703) 305-0401. The examiner can normally be reached on Monday - Friday (11:30 AM - 8 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (703) 308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

